

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jessica Nicole Hauk,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 18, 2023

Court of Appeals Case No.
23A-CR-291

Appeal from the
Shelby Superior Court

The Honorable
David N. Riggins, Judge

Trial Court Cause No.
73D02-2211-F6-410

Memorandum Decision by Judge Vaidik
Judges Mathias and Pyle concur.

Vaidik, Judge.

Case Summary

- [1] Jessica Nicole Hauk pled guilty to Level 6 felony theft and was sentenced to eighteen months, with six months to serve in the Department of Correction and twelve months suspended to probation. Hauk now appeals her sentence, arguing it is inappropriate in light of the nature of the offense and her character. We affirm.

Facts and Procedural History

- [2] In November 2022, Hauk went to a Wal-Mart in Shelbyville, put clothes and other items into her bag, and left without paying. A loss-prevention agent observed Hauk's actions and reported her to Officer Travis Kempton of the Shelbyville Police Department. Officer Kempton searched her bag and found unpaid items totaling \$191.12.
- [3] The State charged Hauk with Level 6 felony theft.¹ Hauk later pled guilty, and her sentence was left to the discretion of the trial court.
- [4] At sentencing, the State argued for an enhanced sentence, emphasizing Hauk's criminal history and repeated probation violations. Specifically, the State noted Hauk has a criminal history consisting of seven felony convictions, including theft, burglary, and fraud, as well as six misdemeanor convictions. Hauk has

¹ This charge was elevated from a Class A misdemeanor because Hauk has a prior theft conviction. Ind. Code § 35-43-4-2(a)(1)(c).

violated probation twice and home detention once. Also at the hearing, Hauk admitted to having a pending case in Decatur County for theft and that she was on probation for a theft conviction at the time of the offense.

[5] The trial court found one aggravator: Hauk’s prior convictions. The court found no mitigators. The court sentenced Hauk to eighteen months, with six months to serve in the DOC and twelve months suspended to probation.

[6] Hauk now appeals.

Discussion and Decision

[7] Hauk argues her sentence is inappropriate and asks us to “revise [it] to home detention.” Appellant’s Br. p. 9. Indiana Appellate Rule 7(B) provides that an appellate court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The court’s role under Rule 7(B) is to “leaven the outliers,” and “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). “Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that

their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[8] The sentencing range for Level 6 felony theft is six months to two-and-a-half years, with an advisory sentence of one year. Ind. Code § 35-50-2-7(b). Here, the trial court imposed an above-advisory sentence of eighteen months. However, only six months were to be served in the DOC, with the remaining year suspended to probation.

[9] Hauk argues the nature of the offense does not warrant this sentence because the act of stealing “less than \$200 of items from Wal-Mart” wasn’t “particularly egregious.” Appellant’s Br. p. 5. We agree. Hauk’s character alone, however, supports her sentence. While Hauk points out positive things about her character—being sober for sixty days and having secured housing and employment for when she is released—these positive developments must be weighed against her extensive criminal history. She has seven felony convictions and six misdemeanor convictions, many of which also involve theft. Furthermore, Hauk was on probation for a theft case when she committed the present offense. Given this history, we cannot say that a sentence of eighteen months—with only six months to serve in the DOC—is inappropriate.

[10] Affirmed.

Mathias, J., and Pyle, J., concur.